

AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
VALLEY METRO RAIL, INC.

THIS AGREEMENT is entered into 15 January, 2004, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA ("State"), acting by and through its DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION ("DOT"), and VALLEY METRO RAIL, INC. ("Valley Metro Rail")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-401 and 28-9201, et seq. to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. Valley Metro Rail herein (comprised of representatives of the Cities of Phoenix, Tempe and Mesa, and Glendale) is empowered by Arizona Revised Statutes Section 28-9203, effective August 22, 2002, and 40-1152 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, and has resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of Valley Metro Rail.

3. Valley Metro Rail has developed a final environment impact statement, design work, and will be acquiring right of way needed to construct the light rail transit (LRT) System. Prior to rail revenue service, the Federal Transit Administration (FTA), utilizing decision criteria defined in TEA-21 49 CFR (Code of Federal Regulations) Part 659, noted in Exhibit "A", attached hereto and made a part hereof, requires all safety oversight programs to comply with all applicable rules and regulations.

4. The State, through ADOT's Public Transit Section of Transportation Planning Division (TPD), is assigned the State Safety Oversight (SSO) role and tasked with developing and overseeing the development and implementation of safety guidelines for the rail transit systems operating within the metropolitan Phoenix area and surrounding cities, herein referred to as the "Light Rail System" or, the "LRT System."

NO. 26534
Filed with the Secretary of State
Date Filed: 01/15/2004

Janice K. Brewer
Secretary of State

By: Darryl D. Graessewald

5. Currently, the State has no funding source available to perform such an assignment. Valley Metro Rail agrees to provide funding to the State, in which the State is to procure a qualified consultant, to assist in accomplishing the safety guideline standards for the light rail transit system and pay consultant costs, materials, supplies, potential salaries, and all costs required, herein referred to as the "Project".

6. The terms of this Agreement will not expire and will be continuous per Arizona Revised Statutes Section 28-9201, et.seq.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Upon execution of this agreement, invoice Valley Metro Rail \$250,000 for its first year's efforts associated with the "Light Rail System" or, the "LRT System. Prepare an estimate for the upcoming Fiscal Year 2004 (FY 04) and provide to Valley Metro Rail on or about April 1, 2004.

b. Through its consultant hiring process, employ a qualified consulting firm for the LRT system.

c. Through the DOT's TPD, Public Transit Section oversee, the safety guidelines for the LRT System operating within the metropolitan Phoenix area and surrounding cities, utilizing decision criteria defined in TEA-21, 49 CFR Part 659 requirements..

d. Prior to rail revenue service, DOT will certify that all oversight programs, major operational changes, and route extensions, etc., are fully compliant with the Federal Transit Administration, utilizing decision criteria defined in TEA-21 49 CFR Part 659 requirements.

e. Provide input to Valley Metro Rail relevant to specific engineering design issues developed by professional engineering staff or consultants as it relates to safety and security of the LRT System.

f. Invoice Valley Metro Rail for the upcoming Fiscal Year, and provide statements with actual costs, semi-annually prior to July 1st and January 1st

g. Based on actual costs, carry-over any remaining funds for use on light rail safety and security responsibilities as addressed in this agreement.

2. Valley Metro Rail will:

Pursuant to A.R.S. § 28.9201 *et seq*:

a. Upon execution of this agreement and receipt of an invoice from the State, remit \$250,000.00 for DOT's safety oversight of the LRT System. Payments will be made in semi-annual installments upon receipt of an invoice from ADOT. After the first semi-annual payment, DOT will provide an itemized statement of costs incurred during the previous six-month period. Semi-annual payments will be invoiced and disbursed prior to July 1st and January 1st.

b. Pay for any risk management costs that DOT incurs resulting from DOT's safety oversight of the LRT System.

c. Pay for judgments against the State resulting from DOT's safety oversight of the LRT System.

d. Provide copies of all Requests for Proposals, Solicitations and associated bid documents for equipment, services and related activities that pertain to the safety and security of the LRT System. The copies will be distributed to DOT's Public Transit Section.

e. Provide to the ADOT's staff, copies of all plans, drawings and project development activities related to the LRT system's safety and security, for review, comments and suggestions prior to any final recommendations taken.

f. Provide adequate notification regarding safety and security meetings for the DOT representatives to attend.

g. Provide DOT staff access and rail passes to transit system facilities pertaining to the performance of DOT responsibilities.

h. Provide DOT staff any required Valley Metro Rail telephone directories; personnel listings as well as, a twenty-four (24) hour emergency contact person in the event of an emergency.

i. Provide DOT staff with office facilities on Valley Metro Rail premises.

j. Respond in writing to DOT regarding all SSO regulatory issues, comments, suggestions, action items or other topics for tracking purposes.

k. Respond to all DOT suggestions in written format to define the actions taken or the failure to act in a timely manner to correct SSO violations. All SSO suggestions must be responded to in a timely manner.

l. Provide for a full time position and staff the position of Safety and Security Manager according the LRT System Project Management Plan to serve as the official liaison for the State (SSO) activities.

COST PLAN

- The funding source for the System Safety Program Standards deliverables required by FTA as well as any technical, information literature, State supplies, expenses, compensation, including any time expended by the DOT's Legal Office, in working with the DOT's Transportation Planning Division, Transit Section while participating in the SSO function, will be paid for out of the funds provided by Valley Metro Rail.

III. MISCELLANEOUS PROVISIONS

1. a. Valley Metro Rail assumes full responsibility and liability for the actions of the State and DOT as they relate to this Agreement. The State and DOT assume no financial obligation or liability under this Agreement. Nor does the State or DOT assume any responsibility for any resulting construction project on the LRT System. Valley Metro Rail assumes full responsibility for the design, plans, specifications, reports, operation and the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims.

b. Valley Metro Rail shall require its contractors to name the State and DOT as additional insureds in the contractors' insurance policies. Valley Metro Rail shall also require its contractors to name the State and ADOT as additional indemnitees in Valley Metro Rail's contracts with its contractors.

c. Valley Metro Rail will maintain and keep in force a policy of general liability insurance in the face amount of not less than \$25,000,000.00 from and after the onset of LRT System operations. Both the State and DOT will be named as additional insureds under such policy. From and after the effective date

of this Agreement and until such time as the onset of LRT System operations Valley Metro Rail shall name the State and DOT as additional insureds on any policy of general liability insurance maintained by Valley Metro Rail.

d. Any judgments and costs arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of Valley Metro Rail and that to the extent permitted by law, Valley Metro Rail hereby agrees to save, defend and hold harmless and indemnify from loss the State and ADOT, any of its departments, agencies, officers or employees from any and all judgments and costs incurred by any of the above and from any other judgments and costs incurred by any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event(s) arising out of the performance or nonperformance of any provisions of this Agreement by Valley Metro Rail, any of its agents, officers and employees, or any of its independent contractors. Judgments and costs incurred by the State or DOT, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. This agreement shall become effective upon filing with the Secretary of State.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

6. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to the agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona are incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, MD 616E
Phoenix, AZ 85007

Valley Metro Rail, Inc.
Wulf Grote, Executive Director
411 N. Central Ave., Suite 600
Phoenix, AZ 85004

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

VALLEY METRO RAIL, INC. a Non-Profit Corporation

STATE OF ARIZONA
Department of Transportation

By 
WULF GROTE, Executive Director

By 
VICTOR MENDEZ, Director

ATTEST

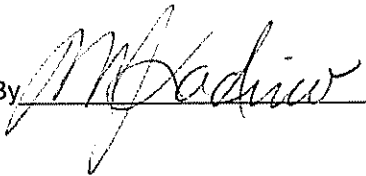
By 

Exhibit "A"

FTA Regulations, 49 C.F.R. Part 659

Federal Transit Authority's ("FTA") Rule requires State Safety Oversight for all rail fixed guide-way systems (RFGS) in revenue operation after January 1, 1997. Therefore, it states that with New Starts systems must have a functional Oversight Program in place that is in full compliance with 49 CFR Part 659 requirements with the initiation of rail revenue service. The Rule also requires that submissions made to FTA for existing oversight programs must be updated to reflect major operational changes, which include extensions funded through the New Starts program.

FTA's Final Rule for State Safety Oversight requires each state with an RFGS operating within its borders to designate an Oversight Agency with sufficient legal authority and technical capacity to comply with the minimum requirements established in Part 659. Specifying the exact details of how the Oversight Agency operates is beyond the scope of Part 659 and is left for each Oversight Agency to determine. FTA does not require a single approach to establishing the legal, financial, or procedural mechanisms used to provide oversight.

FTA's State Safety Oversight Program outlines eight distinct functions that must be performed for compliance:

- Oversight Agency Designation and Authority (§659.21)
 - Oversight Agency Program Management (§659.47, §659.23, §659.31, and §659.45)
 - System Safety/Security Program Standard Preparation and Adoption and RFGS System Safety/Security Program Plan Review and Approval Process (§659.31 and §659.33)
 - Accident/Unacceptable Hazardous Conditions Investigations and Corrective Actions (§659.39, §659.41 and §659.43)
 - Three-year Safety Reviews (§659.37)
 - Requiring and Reviewing RFGS Internal Safety Audit Process Reporting (§659.35)
 - Oversight Agency Certification and Reporting to FTA (§659.45, §659.49).
 - The obligation of the state to designate the Oversight Agency.
 - The authorities and responsibilities of the Oversight Agency in developing the requirements and programs necessary to comply with FTA's State Safety Oversight Program.
 - The role of the rail transit system in complying with the program developed by the Oversight Agency.
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BOARD MEETING MINUTES

November 19, 2003
411 North Central Avenue, Suite 200, Board Room
Phoenix, Arizona

Board Members Present

Mayor Skip Rimsza, Chairman, City of Phoenix
Mayor Keno Hawker, Vice-Chairman / Councilmember Mike Whalen, City of Mesa
Councilmember Len Copple, City of Tempe
Jim Book, Transportation Director, City of Glendale

Others Present

Dianne Barker, Citizen
Steve Batte, Carter Burgess
Dave Benyi, Ashton Tiffany
Donald Boss, Kinkisharyo Int.
Jim Brahaney, City of Phoenix
Ted Branson, Valley Metro Rail
Rick Brown, Valley Metro Rail
Brian Buchanan, Valley Metro Rail
Debbie Cotton, City of Phoenix
William Blue Crowley, Citizen
Jim Dickey, Valley Metro/RPTA
Ken Driggs, Valley Metro/RPTA
Bill Ezell, Valley Metro Rail
John Farry, Valley Metro Rail
Gina Frackiewicz, Valley Metro Rail
Scott Friedson, Arizona Department of
Transportation
Dave Gobelle, Valley Metro Rail
Thomas Godbee, City of Phoenix
Wulf Grote, Valley Metro Rail
David Hignite, Valley Metro Rail

Maria Hyatt, City of Phoenix
Gregg Kent, City of Tempe
Mike Ladino, Shughart Thomson & Kilroy
Jeff Martin, City of Mesa
Barry Mora, Valley Metro Rail
Peter Morrison, San Diego Trolley
Mary O'Connor, City of Tempe
Steve Playford, Valley Metro Rail
Monica Rapps, Ryley Carlock & Applewhite
Bill Sapper, Arizona Department of
Transportation
Daisake Sato, Mitsu & Co (U.S.A.)
Bill Stanfield, Valley Metro Rail
Clive Thomes, Valley Metro Rail/PB
Mike Tiffany, Ashton Tiffany
Kirk Trost, Miller Owen & Trost
Amber Wakeman, City of Tempe
Bill Wardlaw, Valley Metro Rail/PB
Sharon Wood, City of Phoenix
Ed Zuercher, City of Phoenix

1. Call to Order

Chairman Rimsza called the meeting to order at 10:05 a.m.

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2. Call to the Audience (Limit of three minutes for each speaker)

Public Comment

Dianne Barker is a Phoenix resident. At the Citizens Transportation Oversight meeting earlier this week, a light rail model was presented using props (i.e., bike and stroller) indicating that access may be limited. City of Phoenix's Office of Environmental Programs Project Manager informed Ms. Barker that there is \$400,000 being requested for the Brownfields grant for areas for remediation in Arizona; there are about 425 sites along the rail line. If remediation is necessary, the money needed to fix the problems, which has already been budgeted for, needs to be requested from Valley Metro Rail. Ms. Barker is requesting that the funds be used for this purpose. Ms. Barker submitted a written request for information related to the Brownfields issue.

William "Blue" Crowley stated that punctuality of starting the meetings on time is important and should be respected by all.

Mr. Crowley stated that the Yellow Line runs along the heavy rail line which should be considered into the alignment route of the light rail line. He also believes that the light rail line should be running along the 74 and South Mountain. The bus and the light rail should be interplayed together as part of the multi model system.

3. Minutes

IT WAS MOVED BY MAYOR HAWKER AND SECONDED BY JIM BOOK AND UNANIMOUSLY CARRIED TO APPROVE THE OCTOBER 15, 2003 MEETING MINUTES.

4. Executive Director's Report

Wulf Grote stated that the Congressional Conference Committee included \$13 million for the project in the FY 2004 DOT Appropriations bill. Final action is pending in the House and the Senate. This brings the Project's total to approximately \$60 million.

The Federal Transit Administration's Project Management Oversight Contractor, Carter Burgess staff were introduced to the Board. They are: John Fisher, Russel Rudden, Fred Tallarico, Steven Batte, and Frank Hearne.

Recently, the Project celebrated its first groundbreaking for the reconstruction of the 48th Street Bridge. The Notice to Proceed was awarded to FNF Construction.

PBS&J and PGH Wong Engineering, Inc., a Joint Venture, was awarded the Notice to Proceed for the Construction Administration Contract.

The \$7 million contract for special trackwork will be out for bid on November 24.

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5. Executive Session

AT 10:18 A.M. IT WAS MOVED BY JIM BOOK AND SECONDED BY MAYOR HAWKER AND UNANIMOUSLY APPROVED TO ENTER INTO AN EXECUTIVE SESSION TO DISCUSS THE HIRING OF A PERMANENT EXECUTIVE DIRECTOR AND RECEIVE LEGAL COUNSEL REGARDING AGREEMENTS WITH UNION PACIFIC RAILROAD AND THE STATE SAFETY OVERSIGHT AGENCY AND THE LIGHT RAIL VEHICLE CONTRACT.

The Board members reconvened at 11:20 a.m.

6. Hiring of an Executive Director

IT WAS MOVED BY MAYOR HAWKER AND SECONDED BY JIM BOOK AND UNANIMOUSLY CARRIED FOR THE BOARD TO HIRE RICK J. SIMONETTA AS THE EXECUTIVE DIRECTOR OF VALLEY METRO RAIL, INC. AND TO AUTHORIZE FRANK FAIRBANKS TO CONTINUE NEGOTIATIONS WITH MR. SIMONETTA IN ACCORDANCE WITH DISCUSSIONS HELD BY THE BOARD IN EXECUTIVE SESSION.

The record will show that Councilmember Whalen is representing the City of Mesa.

7. Approval of Consent Agenda

8. Central Phoenix/East Valley Light Rail Transit Project

Contracts and Agreements

Prior Rights Utilities Master Agreements

Mr. Grote requested and the Board remove Consent Agenda Item 8 from the agenda and he noted that the item would be returned to Board next month.

9. Light Rail Vehicle Contract

Steve Playford, Director of Program Control and Administration, gave a presentation regarding the process, evaluation criteria, the best and final offers, and staff recommendation for the light rail vehicle manufacturer contract.

"Best Value" procurement differs from a "low bid" procurement in that price is only one of several factors considered in selecting the vendor. The "best value" method assures that Valley Metro Rail will get the vehicle that meets the stated requirements at the best possible price. Valley Metro Rail established weighted evaluation criteria for the technical, commercial, and price components of each manufacturers proposal. Ted Branson, Bill Ezell, Bill Stanfield, Dave Wardlaw and Clive Thomes were the key technical and commercial staff representatives involved in the evaluation process.

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Sealed cost proposals were opened after the technical and commercial evaluations were completed. The cost information was then added to the scores and an award is determined based on the best overall value to the agency.

Evaluation scores have the following point values: 2,500 for technical, 875 for commercial, and 1,625 for cost proposal for a total score of 5,000 points.

Preliminary proposals were received from the following manufacturers: Siemens, Kinkisharyo, Bombardier, AnsaldoBreda, and CAFUSA. All five respondents were invited to submit their "Best and Final Offers". AnsaldoBreda declined to submit their proposal due to insurance requirements. The other four manufacturers were evaluated again on technical and commercial capabilities with cost proposals being opened one week ago.

Each manufacturer was ranked and technical strengths and weaknesses were identified in the evaluation summaries listed below:

	Technical	Commercial	Price	Total
<i>Kinkisharyo</i>	1,560	683	1,615	3,858
<i>Bombardier</i>	1,381	665	1,607	3,653
<i>Siemens</i>	1,253	707	1,515	3,475
<i>CAFUSA</i>	1,355	340	1,196	2,891

Kinkisharyo fully meets Valley Metro Rail's vehicle aesthetic requirements, has an excellent record of on-time delivery, is fully compliant with crashworthiness requirements, and meets weight requirements. Based on these strengths, it is the recommended vehicle manufacturer.

In order to meet federal Buy America requirement, 60 percent of the work and materials have to be provided within the United States. All respondents have provided "Buy America" certification. A pre-award survey will be conducted to assure compliance with "Buy America" requirements. The following manufacturing and final assembly locations were submitted: Kinkisharyo in Japan with final assembly in Arizona, Bombardier in Mexico with final assembly in New York, Siemens in Austria with final assembly in California, and CAFUSA in Spain with final assembly in New York.

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The following is a price submittal summary:

	Total* (in millions)	Per Vehicle (in millions)
Kinkisharyo	\$115.37	\$2.92
Bombardier	\$117.90	\$2.98
Siemens	\$123.52	\$3.19
CAFUSA	\$146.13	\$3.63
<i>Valley Metro Rail Estimate</i>	<i>\$114.75</i>	<i>\$2.93</i>
<i>Project Engineering Budget</i>	<i>\$123.50</i>	<i>\$3.17</i>

** 36 vehicles, spare parts, special tools and equipment and agency travel*

Today the Notice of Intent to award will be posted and start the ten-day protest period ending on November 29, 2003. Today, we will also initiate pre-award survey ending on December 6, 2003. We will be coming back in December to award the contract.

Mayor Rimsza requested and the Board agreed to meet prior to the December 17 Board meeting to award the vehicle contract and to finalize the hiring of the Executive Director.

Mr. Playford stated that the vehicle contract has two Notices to Proceed for the design of the vehicle and the production of the first two prototypes with a value of \$27 million (Valley Metro Rail's estimate was \$25 million). After the award of the Full Funding Grant Agreement, a second Notice to Proceed for the production of the vehicles will be awarded.

Chairman Rimsza requested and the Board agreed that any meetings with vehicle manufacturers prior the actual award of the contract would be publicly noticed.

10. State Safety Oversight Contract

IT WAS MOVED BY COUNCILMEMBER COPPLE AND SECONDED BY JIM BOOK AND UNANIMOUSLY CARRIED TO AUTHORIZE THE EXECUTIVE DIRECTOR TO SIGN THE STATE SAFETY OVERSIGHT AGREEMENT WITH THE ARIZONA DEPARTMENT OF TRANSPORTATION.

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11. Union Pacific Railroad Construction, Operations, and Maintenance Agreement

IT WAS MOVED BY COUNCILMEMBER COPPLE AND SECONDED BY JIM BOOK AND UNANIMOUSLY CARRIED TO AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE THE CONSTRUCTION, OPERATIONS, AND MAINTENANCE AGREEMENT WITH THE UNION PACIFIC RAILROAD COMPANY.

12. Union Pacific Railroad Power Pole Relocation Agreement

IT WAS MOVED BY COUNCILMEMBER COPPLE AND SECONDED BY JIM BOOK AND UNANIMOUSLY CARRIED TO AUTHORIZE THE EXECUTIVE DIRECTOR TO EXECUTE THE POWER POLE RELOCATION AGREEMENT WITH THE UNION PACIFIC RAILROAD COMPANY.

13. Adjournment

The meeting adjourned at 12:00 p.m.

APPROVAL OF THE VALLEY METRO RAIL, INC. ATTORNEY

I have reviewed the attached proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and the VALLEY METRO RAIL, INC and declare this agreement to be in proper form and within the powers and authority granted to the Authority under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 26th day of November, 2003.



Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE 602.542.8837

TERRY GODDARD
ATTORNEY GENERAL

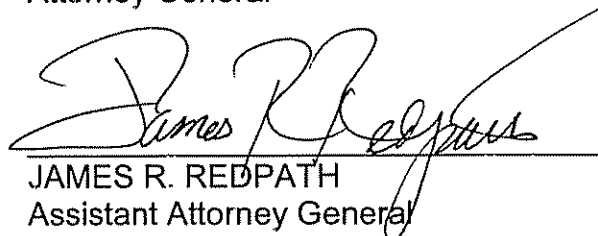
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR02-1501TRN (JPA 02-46), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED January 12, 2004.

TERRY GODDARD
Attorney General


JAMES R. REDPATH
Assistant Attorney General
Transportation Section

/ss

att.